

Calendar No. 838

110TH CONGRESS
2D SESSION

S. 27

[Report No. 110–400]

To authorize the implementation of the San Joaquin River Restoration
Settlement.

IN THE SENATE OF THE UNITED STATES

JANUARY 4, 2007

Mrs. FEINSTEIN (for herself and Mrs. BOXER) introduced the following bill;
which was read twice and referred to the Committee on Energy and Nat-
ural Resources

JUNE 25, 2008

Reported by Mr. BINGAMAN, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To authorize the implementation of the San Joaquin River
Restoration Settlement.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “San Joaquin River
5 Restoration Settlement Act”.

1 **SEC. 2. PURPOSE.**

2 The purpose of this Act is to authorize implementa-
 3 tion of the Stipulation of Settlement dated September 13,
 4 2006 (referred to in this Act as the “Settlement”), in the
 5 litigation entitled NATURAL RESOURCES DEFENSE
 6 COUNCIL, et al. v. KIRK RODGERS, et al., United
 7 States District Court, Eastern District of California, No.
 8 CIV. S-88-1658-LKK/GCH.

9 **SEC. 3. DEFINITIONS.**

10 In this Act, the terms “Friant Division long-term
 11 contractors”, “Interim Flows”, “Restoration Flows”, “Re-
 12 covered Water Account”, “Restoration Goal”, and “Water
 13 Management Goal” have the meanings given the terms in
 14 the Settlement.

15 **SEC. 4. IMPLEMENTATION OF SETTLEMENT.**

16 (a) IN GENERAL.—The Secretary of the Interior (re-
 17 ferred to in this Act as the “Secretary”) is hereby author-
 18 ized and directed to implement the terms and conditions
 19 of the Settlement in cooperation with the State of Cali-
 20 fornia, including the following measures as these measures
 21 are prescribed in the Settlement:

22 (1) Design and construct channel and struc-
 23 tural improvements as described in paragraph 11 of
 24 the Settlement, provided, however, that the Sec-
 25 retary shall not make or fund any such improve-
 26 ments to facilities or property of the State of Cali-

1 fornia without the approval of the State of Cali-
 2 fornia and the State's agreement in 1 or more
 3 Memoranda of Understanding to participate where
 4 appropriate.

5 (2) Modify Friant Dam operations so as to pro-
 6 vide Restoration Flows and Interim Flows.

7 (3) Acquire water, water rights, or options to
 8 acquire water as described in paragraph 13 of the
 9 Settlement, provided, however, such acquisitions
 10 shall only be made from willing sellers and not
 11 through eminent domain.

12 (4) Implement the terms and conditions of
 13 paragraph 16 of the Settlement related to recircula-
 14 tion, recapture, reuse, exchange, or transfer of water
 15 released for Restoration Flows or Interim Flows, for
 16 the purpose of accomplishing the Water Manage-
 17 ment Goal of the Settlement, subject to—

18 (A) applicable provisions of California
 19 water law;

20 (B) the Secretary's use of Central Valley
 21 Project facilities to make Project water (other
 22 than water released from Friant Dam pursuant
 23 to the Settlement) and water acquired through
 24 transfers available to existing south-of-Delta
 25 Central Valley Project contractors; and

1 (C) the Secretary's performance of the
 2 Agreement of November 24, 1986, between the
 3 United States of America and the Department
 4 of Water Resources of the State of California
 5 for the coordinated operation of the Central
 6 Valley Project and the State Water Project as
 7 authorized by Congress in section 2(d) of the
 8 Act of August 26, 1937 (50 Stat. 850, 100
 9 Stat. 3051), including any agreement to resolve
 10 conflicts arising from said Agreement.

11 (5) Develop and implement the Recovered
 12 Water Account as specified in paragraph 16(b) of
 13 the Settlement, including the pricing and payment
 14 crediting provisions described in paragraph 16(b)(3)
 15 of the Settlement, provided that all other provisions
 16 of Federal reclamation law shall remain applicable.

17 (b) AGREEMENTS.—

18 (1) AGREEMENTS WITH THE STATE.—In order
 19 to facilitate or expedite implementation of the Settle-
 20 ment, the Secretary is authorized and directed to
 21 enter into appropriate agreements, including cost
 22 sharing agreements, with the State of California.

23 (2) OTHER AGREEMENTS.—The Secretary is
 24 authorized to enter into contracts, memoranda of
 25 understanding, financial assistance agreements, cost

1 sharing agreements, and other appropriate agree-
 2 ments with State, tribal, and local governmental
 3 agencies, and with private parties, including agree-
 4 ments related to construction, improvement, and op-
 5 eration and maintenance of facilities, subject to any
 6 terms and conditions that the Secretary deems nec-
 7 essary to achieve the purposes of the Settlement.

8 (c) ACCEPTANCE AND EXPENDITURE OF NON-FED-
 9 ERAL FUNDS.—The Secretary is authorized to accept and
 10 expend non-Federal funds in order to facilitate implemen-
 11 tation of the Settlement.

12 (d) MITIGATION OF IMPACTS.—Prior to the imple-
 13 mentation of decisions or agreements to construct, im-
 14 prove, operate, or maintain facilities that the Secretary de-
 15 termines are needed to implement the Settlement, the Sec-
 16 retary shall identify—

17 (1) the impacts associated with such actions;
 18 and

19 (2) the measures which shall be implemented to
 20 mitigate impacts on adjacent and downstream water
 21 users and landowners.

22 (e) DESIGN AND ENGINEERING STUDIES.—The Sec-
 23 retary is authorized to conduct any design or engineering
 24 studies that are necessary to implement the Settlement.

1 (f) EFFECT ON CONTRACT WATER ALLOCATIONS.—

2 Except as otherwise provided in this section, the imple-
 3 mentation of the Settlement and the reintroduction of
 4 California Central Valley Spring Run Chinook salmon
 5 pursuant to the Settlement and section 10, shall not result
 6 in the involuntary reduction in contract water allocations
 7 to Central Valley Project long-term contractors, other
 8 than Friant Division long-term contractors.

9 (g) EFFECT ON EXISTING WATER CONTRACTS.—Ex-

10 cept as provided in the Settlement and this Act, nothing
 11 in this Act shall modify or amend the rights and obliga-
 12 tions of the parties to any existing water service, repay-
 13 ment, purchase or exchange contract.

14 **SEC. 5. ACQUISITION AND DISPOSAL OF PROPERTY; TITLE**
 15 **TO FACILITIES.**

16 (a) TITLE TO FACILITIES.—Unless acquired pursu-
 17 ant to subsection (b), title to any facility or facilities,
 18 stream channel, levees, or other real property modified or
 19 improved in the course of implementing the Settlement au-
 20 thorized by this Act, and title to any modifications or im-
 21 provements of such facility or facilities, stream channel,
 22 levees, or other real property—

23 (1) shall remain in the owner of the property;
 24 and

1 (2) shall not be transferred to the United
2 States on account of such modifications or improve-
3 ments.

4 (b) ACQUISITION OF PROPERTY.—

5 (1) IN GENERAL.—The Secretary is authorized
6 to acquire through purchase from willing sellers any
7 property, interests in property, or options to acquire
8 real property needed to implement the Settlement
9 authorized by this Act.

10 (2) APPLICABLE LAW.—The Secretary is au-
11 thorized, but not required, to exercise all of the au-
12 thorities provided in section 2 of the Act of August
13 26, 1937 (50 Stat. 844, chapter 832), to carry out
14 the measures authorized in this section and section
15 4.

16 (c) DISPOSAL OF PROPERTY.—

17 (1) IN GENERAL.—Upon the Secretary's deter-
18 mination that retention of title to property or inter-
19 ests in property acquired pursuant to this Act is no
20 longer needed to be held by the United States for
21 the furtherance of the Settlement, the Secretary is
22 authorized to dispose of such property or interest in
23 property on such terms and conditions as the Sec-
24 retary deems appropriate and in the best interest of

the United States, including possible transfer of such property to the State of California.

~~(2) RIGHT OF FIRST REFUSAL.~~—In the event the Secretary determines that property acquired pursuant to this Act through the exercise of its eminent domain authority is no longer necessary for implementation of the Settlement, the Secretary shall provide a right of first refusal to the property owner from whom the property was initially acquired, or his or her successor in interest, on the same terms and conditions as the property is being offered to other parties.

~~(3) DISPOSITION OF PROCEEDS.~~—Proceeds from the disposal by sale or transfer of any such property or interests in such property shall be deposited in the fund established by section 9(c).

SEC. 6. COMPLIANCE WITH APPLICABLE LAW.

~~(a) APPLICABLE LAW.~~—

~~(1) IN GENERAL.~~—In undertaking the measures authorized by this Act, the Secretary and the Secretary of Commerce shall comply with all applicable Federal and State laws, rules, and regulations, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered

1 Species Act of 1973 (16 U.S.C. 1531 et seq.), as
 2 necessary.

3 ~~(2) ENVIRONMENTAL REVIEWS.~~—The Secretary
 4 and the Secretary of Commerce are authorized and
 5 directed to initiate and expeditiously complete appli-
 6 cable environmental reviews and consultations as
 7 may be necessary to effectuate the purposes of the
 8 Settlement.

9 ~~(b) EFFECT ON STATE LAW.~~—Nothing in this Act
 10 shall preempt State law or modify any existing obligation
 11 of the United States under Federal reclamation law to op-
 12 erate the Central Valley Project in conformity with State
 13 law.

14 ~~(c) USE OF FUNDS FOR ENVIRONMENTAL RE-~~
 15 ~~VIEWS.~~—

16 ~~(1) DEFINITION OF ENVIRONMENTAL RE-~~
 17 ~~VIEW.~~—For purposes of this subsection, the term
 18 “environmental review” includes any consultation
 19 and planning necessary to comply with subsection
 20 ~~(a).~~

21 ~~(2) PARTICIPATION IN ENVIRONMENTAL RE-~~
 22 ~~VIEW PROCESS.~~—In undertaking the measures au-
 23 thorized by section 4, and for which environmental
 24 review is required, the Secretary may provide funds
 25 made available under this Act to affected Federal

1 agencies, State agencies, local agencies, and Indian
 2 tribes if the Secretary determines that such funds
 3 are necessary to allow the Federal agencies, State
 4 agencies, local agencies, or Indian tribes to effec-
 5 tively participate in the environmental review pro-
 6 cess.

7 ~~(3) LIMITATION.—Funds may be provided~~
 8 under paragraph (2) only to support activities that
 9 directly contribute to the implementation of the
 10 terms and conditions of the Settlement.

11 ~~(d) NONREIMBURSABLE FUNDS.—The United~~
 12 States' share of the costs of implementing this Act shall
 13 be nonreimbursable under Federal reclamation law, pro-
 14 vided that nothing in this subsection shall limit or be con-
 15 strued to limit the use of the funds assessed and collected
 16 pursuant to sections 3406(c)(1) and 3407(d)(2) of the
 17 Reclamation Projects Authorization and Adjustment Act
 18 of 1992 (Public Law 102–575; 106 Stat. 4721, 4727), for
 19 implementation of the Settlement, nor shall it be con-
 20 strued to limit or modify existing or future Central Valley
 21 Project Ratesetting Policies.

22 **SEC. 7. COMPLIANCE WITH CENTRAL VALLEY PROJECT IM-**
 23 **PROVEMENT ACT.**

24 Congress hereby finds and declares that the Settle-
 25 ment satisfies and discharges all of the obligations of the

1 Secretary contained in section 3406(c)(1) of the Reclama-
 2 tion Projects Authorization and Adjustment Act of 1992
 3 (Public Law 102–575; 106 Stat. 4721), provided, how-
 4 ever, that—

5 (1) the Secretary shall continue to assess and
 6 collect the charges provided in section 3406(c)(1) of
 7 the Reclamation Projects Authorization and Adjust-
 8 ment Act of 1992 (Public Law 102–575; 106 Stat.
 9 4721), as provided in the Settlement and section
 10 9(d); and

11 (2) those assessments and collections shall con-
 12 tinue to be counted towards the requirements of the
 13 Secretary contained in section 3407(c)(2) of the
 14 Reclamation Projects Authorization and Adjustment
 15 Act of 1992 (Public Law 102–575; 106 Stat. 4726).

16 **SEC. 8. NO PRIVATE RIGHT OF ACTION.**

17 (a) IN GENERAL.—Nothing in this Act confers upon
 18 any person or entity not a party to the Settlement a pri-
 19 vate right of action or claim for relief to interpret or en-
 20 force the provisions of this Act or the Settlement.

21 (b) APPLICABLE LAW.—This section shall not alter
 22 or curtail any right of action or claim for relief under any
 23 other applicable law.

24 **SEC. 9. APPROPRIATIONS; SETTLEMENT FUND.**

25 (a) IMPLEMENTATION COSTS.—

1 ~~(1) IN GENERAL.—~~The costs of implementing
2 the Settlement shall be covered by payments or in
3 kind contributions made by Friant Division contrac-
4 tors and other non-Federal parties, including the
5 funds provided in paragraphs (1) through (5) of
6 subsection (c); estimated to total \$440,000,000, of
7 which the non-Federal payments are estimated to
8 total \$200,000,000 (at October 2006 price levels)
9 and the amount from repaid Central Valley Project
10 capital obligations is estimated to total
11 \$240,000,000, the additional Federal appropriation
12 of \$250,000,000 authorized pursuant to subsection
13 (b)(1); and such additional funds authorized pursu-
14 ant to subsection (b)(2); provided however, that the
15 costs of implementing the provisions of section
16 4(a)(1) shall be shared by the State of California
17 pursuant to the terms of a Memorandum of Under-
18 standing executed by the State of California and the
19 Parties to the Settlement on September 13, 2006;
20 which includes at least \$110,000,000 of State funds.

21 ~~(2) ADDITIONAL AGREEMENTS.—~~

22 ~~(A) IN GENERAL.—~~The Secretary shall
23 enter into 1 or more agreements to fund or im-
24 plement improvements on a project-by-project
25 basis with the State of California.

1 ~~(B) REQUIREMENTS.—~~Any agreements en-
 2 tered into under subparagraph (A) shall provide
 3 for recognition of either monetary or in-kind
 4 contributions toward the State of California's
 5 share of the cost of implementing the provisions
 6 of section 4(a)(1).

7 ~~(3) LIMITATION.—~~Except as provided in the
 8 Settlement, to the extent that costs incurred solely
 9 to implement this Settlement would not otherwise
 10 have been incurred by any entity or public or local
 11 agency or subdivision of the State of California, such
 12 costs shall not be borne by any such entity, agency,
 13 or subdivision of the State of California, unless such
 14 costs are incurred on a voluntary basis.

15 ~~(b) AUTHORIZATION OF APPROPRIATIONS.—~~

16 ~~(1) IN GENERAL.—~~In addition to the funds pro-
 17 vided in paragraphs (1) through (5) of subsection
 18 (c), there are also authorized to be appropriated not
 19 to exceed \$250,000,000 (at October 2006 price lev-
 20 els) to implement this Act and the Settlement, to be
 21 available until expended; provided however, that the
 22 Secretary is authorized to spend such additional ap-
 23 propriations only in amounts equal to the amount of
 24 funds deposited in the Fund (not including pay-
 25 ments under subsection (c)(2), proceeds under sub-

1 section (c)(3) other than an amount equal to what
 2 would otherwise have been deposited under sub-
 3 section (c)(1) in the absence of issuance of the bond,
 4 and proceeds under subsection (c)(4)), the amount
 5 of in-kind contributions, and other non-Federal pay-
 6 ments actually committed to the implementation of
 7 this Act or the Settlement.

8 (2) OTHER FUNDS.—The Secretary is author-
 9 ized to use monies from the Fund created under sec-
 10 tion 3407 of the Reclamation Projects Authorization
 11 and Adjustment Act of 1992 (Public Law 102–575;
 12 106 Stat. 4727) for purposes of this Act.

13 (c) FUND.—There is hereby established within the
 14 Treasury of the United States a fund, to be known as the
 15 “San Joaquin River Restoration Fund”, into which the
 16 following shall be deposited and used solely for the purpose
 17 of implementing the Settlement, to be available for ex-
 18 penditure without further appropriation:

19 (1) Subject to subsection (d), at the beginning
 20 of the fiscal year following enactment of this Act, all
 21 payments received pursuant to section 3406(c)(1) of
 22 the Reclamation Projects Authorization and Adjust-
 23 ment Act of 1992 (Public Law 102–575; 106 Stat.
 24 4721).

1 (2) Subject to subsection (d), the capital com-
2 ponent (not otherwise needed to cover operation and
3 maintenance costs) of payments made by Friant Di-
4 vision long-term contractors pursuant to long-term
5 water service contracts beginning the first fiscal year
6 after the date of enactment of this Act. The capital
7 repayment obligation of such contractors under such
8 contracts shall be reduced by the amount paid pur-
9 suant to this paragraph and the appropriate share
10 of the existing Federal investment in the Central
11 Valley Project to be recovered by the Secretary pur-
12 suant to Public Law 99-546 (100 Stat. 3050) shall
13 be reduced by an equivalent sum.

14 (3) Proceeds from a bond issue, federally-guar-
15 anteed loan, or other appropriate financing instru-
16 ment, to be issued or entered into by an appropriate
17 public agency or subdivision of the State of Cali-
18 fornia pursuant to subsection (d)(2).

19 (4) Proceeds from the sale of water pursuant to
20 the Settlement, or from the sale of property or inter-
21 ests in property as provided in section 5.

22 (5) Any non-Federal funds, including State
23 cost-sharing funds, contributed to the United States
24 for implementation of the Settlement, which the Sec-

1 retary may expend without further appropriation for
 2 the purposes for which contributed.

3 ~~(d) GUARANTEED LOANS AND OTHER FINANCING~~
 4 ~~INSTRUMENTS.—~~

5 (1) IN GENERAL.—The Secretary is authorized
 6 to enter into agreements with appropriate agencies
 7 or subdivisions of the State of California in order to
 8 facilitate a bond issue, federally-guaranteed loan, or
 9 other appropriate financing instrument, for the pur-
 10 pose of implementing this Settlement.

11 (2) REQUIREMENTS.—If the Secretary and an
 12 appropriate agency or subdivision of the State of
 13 California enter into such an agreement, and if such
 14 agency or subdivision issues 1 or more revenue
 15 bonds, procures a federally secured loan, or other
 16 appropriate financing to fund implementation of the
 17 Settlement, and if such agency deposits the proceeds
 18 received from such bonds, loans, or financing into
 19 the Fund pursuant to subsection (c)(3), monies
 20 specified in paragraphs (1) and (2) of subsection (c)
 21 shall be provided by the Friant Division long-term
 22 contractors directly to such public agency or subdivi-
 23 sion of the State of California to repay the bond,
 24 loan or financing rather than into the Fund.

1 ~~(3) DISPOSITION OF PAYMENTS.—~~After the sat-
 2 isfaction of any such bond, loan, or financing, the
 3 payments specified in paragraphs ~~(1)~~ and ~~(2)~~ of sub-
 4 section ~~(c)~~ shall be paid directly into the Fund au-
 5 thorized by this section.

6 ~~(c) LIMITATION ON CONTRIBUTIONS.—~~Payments
 7 made by long-term contractors who receive water from the
 8 Friant Division and Hidden and Buchanan Units of the
 9 Central Valley Project pursuant to sections 3406(c)(1)
 10 and 3407(d)(2) of the Reclamation Projects Authorization
 11 and Adjustment Act of 1992 (Public Law 102–575; 106
 12 Stat. 4721, 4727) and payments made pursuant to para-
 13 graph 16(b)(3) of the Settlement and subsection ~~(c)(2)~~
 14 shall be the limitation of such entities’ direct financial con-
 15 tribution to the Settlement, subject to the terms and con-
 16 ditions of paragraph 21 of the Settlement.

17 ~~(f) NO ADDITIONAL EXPENDITURES REQUIRED.—~~
 18 Nothing in this Act shall be construed to require a Federal
 19 official to expend Federal funds not appropriated by Con-
 20 gress, or to seek the appropriation of additional funds by
 21 Congress, for the implementation of the Settlement.

22 ~~(g) REACH 4B.—~~

23 ~~(1) STUDY.—~~

24 ~~(A) IN GENERAL.—~~In accordance with the
 25 Settlement and the Memorandum of Under-

standing executed pursuant to paragraph 6 of the Settlement, the Secretary shall conduct a study that specifies—

(i) the costs of undertaking any work required under paragraph 11(a)(3) of the Settlement to increase the capacity of Reach 4B prior to reinitiation of Restoration Flows;

(ii) the impacts associated with reinitiation of such flows; and

(iii) measures that shall be implemented to mitigate impacts.

(B) DEADLINE.—The study under subparagraph (A) shall be completed prior to restoration of any flows other than Interim Flows.

(2) REPORT.—

(A) IN GENERAL.—The Secretary shall file a report with Congress not later than 90 days after issuing a determination, as required by the Settlement, on whether to expand channel conveyance capacity to 4500 cubic feet per second in Reach 4B of the San Joaquin River, or use an alternative route for pulse flows, that—

1 (i) explains whether the Secretary has
2 decided to expand Reach 4B capacity to
3 4500 cubic feet per second; and

4 (ii) addresses the following matters:

5 (I) The basis for the Secretary's
6 determination, whether set out in en-
7 vironmental review documents or oth-
8 erwise, as to whether the expansion of
9 Reach 4B would be the preferable
10 means to achieve the Restoration Goal
11 as provided in the Settlement, includ-
12 ing how different factors were as-
13 sessed such as comparative biological
14 and habitat benefits, comparative
15 costs, relative availability of State
16 cost-sharing funds, and the compara-
17 tive benefits and impacts on water
18 temperature, water supply, private
19 property, and local and downstream
20 flood control.

21 (II) The Secretary's final cost es-
22 timate for expanding Reach 4B capac-
23 ity to 4500 cubic feet per second, or
24 any alternative route selected, as well
25 as the alternative cost estimates pro-

1 vided by the State, by the Restoration
 2 Administrator, and by the other par-
 3 ties to the Settlement.

4 (III) The Secretary's plan for
 5 funding the costs of expanding Reach
 6 4B or any alternative route selected,
 7 whether by existing Federal funds
 8 provided under this Act, by non-Fed-
 9 eral funds, by future Federal appro-
 10 priations, or some combination of
 11 such sources.

12 (B) DETERMINATION REQUIRED.—The
 13 Secretary shall, to the extent feasible, make the
 14 determination in subparagraph (A) prior to un-
 15 dertaking any substantial construction work to
 16 increase capacity in Reach 4B.

17 (3) COSTS.—If the Secretary's estimated Fed-
 18 eral cost for expanding Reach 4B in paragraph (2),
 19 in light of the Secretary's funding plan set out in
 20 paragraph (2), would exceed the remaining Federal
 21 funding authorized by this Act (including all funds
 22 reallocated, all funds dedicated, and all new funds
 23 authorized by this Act and separate from all com-
 24 mitments of State and other non-Federal funds and
 25 in-kind commitments), then before the Secretary

1 commences actual construction work in Reach 4B
2 (other than planning, design, feasibility, or other
3 preliminary measures) to expand capacity to 4500
4 cubic feet per second to implement this Settlement;
5 Congress must have increased the applicable author-
6 ization ceiling provided by this Act in an amount at
7 least sufficient to cover the higher estimated Federal
8 costs.

9 **SEC. 10. CALIFORNIA CENTRAL VALLEY SPRING RUN CHI-**
10 **NOOK SALMON.**

11 (a) FINDING.—Congress finds that the implementa-
12 tion of the Settlement to resolve 18 years of contentious
13 litigation regarding restoration of the San Joaquin River
14 and the reintroduction of the California Central Valley
15 Spring Run Chinook salmon is a unique and unprece-
16 dented circumstance that requires clear expressions of
17 Congressional intent regarding how the provisions of the
18 Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)
19 are utilized to achieve the goals of restoration of the San
20 Joaquin River and the successful reintroduction of Cali-
21 fornia Central Valley Spring Run Chinook salmon.

22 (b) REINTRODUCTION IN THE SAN JOAQUIN
23 RIVER.—California Central Valley Spring Run Chinook
24 salmon shall be reintroduced in the San Joaquin River
25 below Friant Dam pursuant to section 10(j) of the Endan-

1 gered Species Act of 1973 (16 U.S.C. 1539(j)) and the
 2 Settlement, provided that the Secretary of Commerce
 3 finds that a permit for the reintroduction of California
 4 Central Valley Spring Run Chinook salmon may be issued
 5 pursuant to section 10(a)(1)(A) of the Endangered Spe-
 6 cies Act of 1973 (16 U.S.C. 1539(a)(1)(A)).

7 (c) FINAL RULE.—

8 (1) DEFINITION OF THIRD PARTY.—For the
 9 purpose of this subsection, the term “third party”
 10 means persons or entities diverting or receiving
 11 water pursuant to applicable State and Federal law
 12 and shall include Central Valley Project contractors
 13 outside of the Friant Division of the Central Valley
 14 Project and the State Water Project.

15 (2) ISSUANCE.—The Secretary of Commerce
 16 shall issue a final rule pursuant to section 4(d) of
 17 the Endangered Species Act of 1973 (16 U.S.C.
 18 1533(d)) governing the incidental take of reintro-
 19 duced California Central Valley Spring Run Chinook
 20 salmon prior to the reintroduction.

21 (3) REQUIRED COMPONENTS.—The rule issued
 22 under paragraph (2) shall provide that the reintro-
 23 duction will not impose more than de minimus
 24 water supply reductions, additional storage releases,

1 or bypass flows on unwilling third parties due to
 2 such reintroduction.

3 ~~(4) APPLICABLE LAW.—~~Nothing in this sec-
 4 tion—

5 (A) diminishes the statutory or regulatory
 6 protections provided in the Endangered Species
 7 Act for any species listed pursuant to section 4
 8 of the Endangered Species Act of 1973 (16
 9 U.S.C. 1533) other than the reintroduced popu-
 10 lation of California Central Valley Spring Run
 11 Chinook salmon, including protections pursuant
 12 to existing biological opinions or new biological
 13 opinions issued by the Secretary or Secretary of
 14 Commerce; or

15 (B) precludes the Secretary or Secretary of
 16 Commerce from imposing protections under the
 17 Endangered Species Act of 1973 (16 U.S.C.
 18 1531 et seq.) for other species listed pursuant
 19 to section 4 of that Act (16 U.S.C. 1533) be-
 20 cause those protections provide incidental bene-
 21 fits to such reintroduced California Central Val-
 22 ley Spring Run Chinook salmon.

23 ~~(d) REPORT.—~~

24 ~~(1) IN GENERAL.—~~Not later than December 31,
 25 2024, the Secretary of Commerce shall report to

1 Congress on the progress made on the reintroduction
 2 set forth in this section and the Secretary's plans for
 3 future implementation of this section.

4 (2) INCLUSIONS.—The report under paragraph
 5 (1) shall include—

6 (A) an assessment of the major challenges,
 7 if any, to successful reintroduction;

8 (B) an evaluation of the effect, if any, of
 9 the reintroduction on the existing population of
 10 California Central Valley Spring Run Chinook
 11 salmon existing on the Sacramento River or its
 12 tributaries; and

13 (C) an assessment regarding the future of
 14 the reintroduction.

15 (c) FERC PROJECTS.—

16 (1) IN GENERAL.—With regard to California
 17 Central Valley Spring Run Chinook salmon reintro-
 18 duced pursuant to the Settlement, the Secretary of
 19 Commerce shall exercise its authority under section
 20 18 of the Federal Power Act (16 U.S.C. 811) by re-
 21 serving its right to file prescriptions in proceedings
 22 for projects licensed by the Federal Energy Regu-
 23 latory Commission on the Calaveras, Stanislaus,
 24 Tuolumne, Merced, and San Joaquin rivers and oth-
 25 erwise consistent with subsection (c) until after the

1 expiration of the term of the Settlement, December
 2 31, 2025, or the expiration of the designation made
 3 pursuant to subsection (b), whichever ends first.

4 (2) EFFECT OF SUBSECTION.—Nothing in this
 5 subsection shall preclude the Secretary of Commerce
 6 from imposing prescriptions pursuant to section 18
 7 of the Federal Power Act (16 U.S.C. 811) solely for
 8 other anadromous fish species because those pre-
 9 scriptions provide incidental benefits to such reintro-
 10 duced California Central Valley Spring Run Chinook
 11 salmon.

12 (f) EFFECT OF SECTION.—Nothing in this section is
 13 intended or shall be construed—

14 (1) to modify the Endangered Species Act of
 15 1973 (16 U.S.C. 1531 et seq.) or the Federal Power
 16 Act (16 U.S.C. 791a et seq.); or

17 (2) to establish a precedent with respect to any
 18 other application of the Endangered Species Act of
 19 1973 (16 U.S.C. 1531 et seq.) or the Federal Power
 20 Act (16 U.S.C. 791a et seq.).

21 **SECTION 1. TABLE OF CONTENTS.**

22 *The table of contents for this Act is as follows:*

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Sec. 108. No Private Right of Action.

Sec. 109. Appropriations; Settlement Fund.

Sec. 110. Repayment contracts and acceleration of repayment of construction costs.

Sec. 111. California Central Valley Spring Run Chinook salmon.

TITLE II—STUDY TO DEVELOP WATER PLAN; REPORT

Sec. 201. Study to develop water plan; report.

TITLE III—FRIANT DIVISION IMPROVEMENTS

Sec. 301. Federal facility improvements.

Sec. 302. Financial assistance for local projects.

Sec. 303. Authorization of appropriations.

1 TITLE I—SAN JOAQUIN RIVER 2 RESTORATION SETTLEMENT ACT

3 SEC. 101. SHORT TITLE.

4 *This title may be cited as the “San Joaquin River Res-*
5 *toration Settlement Act”.*

6 SEC. 102. PURPOSE.

7 *The purpose of this title is to authorize implementa-*
8 *tion of the Settlement.*

9 SEC. 103. DEFINITIONS.

10 *In this title:*

11 (1) *The terms “Friant Division long-term con-*
12 *tractors”, “Interim Flows”, “Restoration Flows”,*
13 *“Recovered Water Account”, “Restoration Goal”, and*
14 *“Water Management Goal” have the meanings given*
15 *the terms in the Settlement.*

16 (2) *The term “Secretary” means the Secretary of*
17 *the Interior.*

1 (3) *The term “Settlement” means the Stipulation*
 2 *of Settlement dated September 13, 2006, in the litiga-*
 3 *tion entitled Natural Resources Defense Council, et al.*
 4 *v. Kirk Rodgers, et al., United States District Court,*
 5 *Eastern District of California, No. CIV. S-88-1658-*
 6 *LKK/GGH.*

7 **SEC. 104. IMPLEMENTATION OF SETTLEMENT.**

8 (a) *IN GENERAL.—The Secretary of the Interior is*
 9 *hereby authorized and directed to implement the terms and*
 10 *conditions of the Settlement in cooperation with the State*
 11 *of California, including the following measures as these*
 12 *measures are prescribed in the Settlement:*

13 (1) *Design and construct channel and structural*
 14 *improvements as described in paragraph 11 of the*
 15 *Settlement, provided, however, that the Secretary*
 16 *shall not make or fund any such improvements to fa-*
 17 *cilities or property of the State of California without*
 18 *the approval of the State of California and the State’s*
 19 *agreement in 1 or more memoranda of understanding*
 20 *to participate where appropriate.*

21 (2) *Modify Friant Dam operations so as to pro-*
 22 *vide Restoration Flows and Interim Flows.*

23 (3) *Acquire water, water rights, or options to ac-*
 24 *quire water as described in paragraph 13 of the Set-*
 25 *tlement, provided, however, such acquisitions shall*

1 *only be made from willing sellers and not through*
 2 *eminent domain.*

3 *(4) Implement the terms and conditions of para-*
 4 *graph 16 of the Settlement related to recirculation, re-*
 5 *capture, reuse, exchange, or transfer of water released*
 6 *for Restoration Flows or Interim Flows, for the pur-*
 7 *pose of accomplishing the Water Management Goal of*
 8 *the Settlement, subject to—*

9 *(A) applicable provisions of California*
 10 *water law;*

11 *(B) the Secretary's use of Central Valley*
 12 *Project facilities to make Project water (other*
 13 *than water released from Friant Dam pursuant*
 14 *to the Settlement) and water acquired through*
 15 *transfers available to existing south-of-Delta*
 16 *Central Valley Project contractors; and*

17 *(C) the Secretary's performance of the*
 18 *Agreement of November 24, 1986, between the*
 19 *United States of America and the Department of*
 20 *Water Resources of the State of California for the*
 21 *coordinated operation of the Central Valley*
 22 *Project and the State Water Project as author-*
 23 *ized by Congress in section 2(d) of the Act of Au-*
 24 *gust 26, 1937 (50 Stat. 850, 100 Stat. 3051), in-*

1 *cluding any agreement to resolve conflicts aris-*
 2 *ing from said Agreement.*

3 *(5) Develop and implement the Recovered Water*
 4 *Account as specified in paragraph 16(b) of the Settle-*
 5 *ment, including the pricing and payment crediting*
 6 *provisions described in paragraph 16(b)(3) of the Set-*
 7 *tlement, provided that all other provisions of Federal*
 8 *reclamation law shall remain applicable.*

9 *(b) AGREEMENTS.—*

10 *(1) AGREEMENTS WITH THE STATE.—In order to*
 11 *facilitate or expedite implementation of the Settle-*
 12 *ment, the Secretary is authorized and directed to*
 13 *enter into appropriate agreements, including cost-*
 14 *sharing agreements, with the State of California.*

15 *(2) OTHER AGREEMENTS.—The Secretary is au-*
 16 *thorized to enter into contracts, memoranda of under-*
 17 *standing, financial assistance agreements, cost shar-*
 18 *ing agreements, and other appropriate agreements*
 19 *with State, tribal, and local governmental agencies,*
 20 *and with private parties, including agreements re-*
 21 *lated to construction, improvement, and operation*
 22 *and maintenance of facilities, subject to any terms*
 23 *and conditions that the Secretary deems necessary to*
 24 *achieve the purposes of the Settlement.*

1 (c) *ACCEPTANCE AND EXPENDITURE OF NON-FEDERAL*
 2 *FUNDS.*—*The Secretary is authorized to accept and expend*
 3 *non-Federal funds in order to facilitate implementation of*
 4 *the Settlement.*

5 (d) *MITIGATION OF IMPACTS.*—*Prior to the implemen-*
 6 *tation of decisions or agreements to construct, improve, op-*
 7 *erate, or maintain facilities that the Secretary determines*
 8 *are needed to implement the Settlement, the Secretary shall*
 9 *identify—*

10 (1) *the impacts associated with such actions; and*

11 (2) *the measures which shall be implemented to*
 12 *mitigate impacts on adjacent and downstream water*
 13 *users and landowners.*

14 (e) *DESIGN AND ENGINEERING STUDIES.*—*The Sec-*
 15 *retary is authorized to conduct any design or engineering*
 16 *studies that are necessary to implement the Settlement.*

17 (f) *EFFECT ON CONTRACT WATER ALLOCATIONS.*—*Ex-*
 18 *cept as otherwise provided in this section, the implementa-*
 19 *tion of the Settlement and the reintroduction of California*
 20 *Central Valley Spring Run Chinook salmon pursuant to*
 21 *the Settlement and section 111, shall not result in the invol-*
 22 *untary reduction in contract water allocations to Central*
 23 *Valley Project long-term contractors, other than Friant Di-*
 24 *vision long-term contractors.*

1 (g) *EFFECT ON EXISTING WATER CONTRACTS.*—*Ex-*
 2 *cept as provided in the Settlement and this title, nothing*
 3 *in this title shall modify or amend the rights and obliga-*
 4 *tions of the parties to any existing water service, repay-*
 5 *ment, purchase, or exchange contract.*

6 **SEC. 105. ACQUISITION AND DISPOSAL OF PROPERTY;**

7 **TITLE TO FACILITIES.**

8 (a) *TITLE TO FACILITIES.*—*Unless acquired pursuant*
 9 *to subsection (b), title to any facility or facilities, stream*
 10 *channel, levees, or other real property modified or improved*
 11 *in the course of implementing the Settlement authorized by*
 12 *this title, and title to any modifications or improvements*
 13 *of such facility or facilities, stream channel, levees, or other*
 14 *real property—*

15 (1) *shall remain in the owner of the property;*

16 *and*

17 (2) *shall not be transferred to the United States*
 18 *on account of such modifications or improvements.*

19 (b) *ACQUISITION OF PROPERTY.*—

20 (1) *IN GENERAL.*—*The Secretary is authorized to*
 21 *acquire through purchase from willing sellers any*
 22 *property, interests in property, or options to acquire*
 23 *real property needed to implement the Settlement au-*
 24 *thorized by this title.*

1 (2) *APPLICABLE LAW.*—*The Secretary is author-*
 2 *ized, but not required, to exercise all of the authorities*
 3 *provided in section 2 of the Act of August 26, 1937*
 4 *(50 Stat. 844, chapter 832), to carry out the measures*
 5 *authorized in this section and section 104.*

6 (c) *DISPOSAL OF PROPERTY.*—

7 (1) *IN GENERAL.*—*Upon the Secretary's deter-*
 8 *mination that retention of title to property or inter-*
 9 *ests in property acquired pursuant to this title is no*
 10 *longer needed to be held by the United States for the*
 11 *furtherance of the Settlement, the Secretary is author-*
 12 *ized to dispose of such property or interest in prop-*
 13 *erty on such terms and conditions as the Secretary*
 14 *deems appropriate and in the best interest of the*
 15 *United States, including possible transfer of such*
 16 *property to the State of California.*

17 (2) *RIGHT OF FIRST REFUSAL.*—*In the event the*
 18 *Secretary determines that property acquired pursuant*
 19 *to this title through the exercise of its eminent domain*
 20 *authority is no longer necessary for implementation*
 21 *of the Settlement, the Secretary shall provide a right*
 22 *of first refusal to the property owner from whom the*
 23 *property was initially acquired, or his or her suc-*
 24 *cessor in interest, on the same terms and conditions*
 25 *as the property is being offered to other parties.*

1 (3) *DISPOSITION OF PROCEEDS.*—*Proceeds from*
 2 *the disposal by sale or transfer of any such property*
 3 *or interests in such property shall be deposited in the*
 4 *fund established by section 109(c).*

5 (d) *GROUNDWATER BANK.*—*Nothing in this title au-*
 6 *thorizes the Secretary to operate a groundwater bank along*
 7 *or adjacent to the San Joaquin River upstream of the con-*
 8 *fluence with the Merced River, and any such groundwater*
 9 *bank shall be operated by a non-Federal entity.*

10 **SEC. 106. COMPLIANCE WITH APPLICABLE LAW.**

11 (a) *APPLICABLE LAW.*—

12 (1) *IN GENERAL.*—*In undertaking the measures*
 13 *authorized by this title, the Secretary and the Sec-*
 14 *retary of Commerce shall comply with all applicable*
 15 *Federal and State laws, rules, and regulations, in-*
 16 *cluding the National Environmental Policy Act of*
 17 *1969 (42 U.S.C. 4321 et seq.) and the Endangered*
 18 *Species Act of 1973 (16 U.S.C. 1531 et seq.), as nec-*
 19 *essary.*

20 (2) *ENVIRONMENTAL REVIEWS.*—*The Secretary*
 21 *and the Secretary of Commerce are authorized and*
 22 *directed to initiate and expeditiously complete appli-*
 23 *cable environmental reviews and consultations as*
 24 *may be necessary to effectuate the purposes of the Set-*
 25 *tlement.*

1 (b) *EFFECT ON STATE LAW.*—*Nothing in this title*
 2 *shall preempt State law or modify any existing obligation*
 3 *of the United States under Federal reclamation law to oper-*
 4 *ate the Central Valley Project in conformity with State law.*

5 (c) *USE OF FUNDS FOR ENVIRONMENTAL REVIEWS.*—

6 (1) *DEFINITION OF ENVIRONMENTAL REVIEW.*—
 7 *For purposes of this subsection, the term “environ-*
 8 *mental review” includes any consultation and plan-*
 9 *ning necessary to comply with subsection (a).*

10 (2) *PARTICIPATION IN ENVIRONMENTAL REVIEW*
 11 *PROCESS.*—*In undertaking the measures authorized*
 12 *by section 104, and for which environmental review*
 13 *is required, the Secretary may provide funds made*
 14 *available under this title to affected Federal agencies,*
 15 *State agencies, local agencies, and Indian tribes if the*
 16 *Secretary determines that such funds are necessary to*
 17 *allow the Federal agencies, State agencies, local agen-*
 18 *cies, or Indian tribes to effectively participate in the*
 19 *environmental review process.*

20 (3) *LIMITATION.*—*Funds may be provided under*
 21 *paragraph (2) only to support activities that directly*
 22 *contribute to the implementation of the terms and*
 23 *conditions of the Settlement.*

24 (d) *NONREIMBURSABLE FUNDS.*—*The United States’*
 25 *share of the costs of implementing this title shall be non-*

1 *reimbursable under Federal reclamation law, provided that*
 2 *nothing in this subsection shall limit or be construed to*
 3 *limit the use of the funds assessed and collected pursuant*
 4 *to sections 3406(c)(1) and 3407(d)(2) of the Reclamation*
 5 *Projects Authorization and Adjustment Act of 1992 (Public*
 6 *Law 102–575; 106 Stat. 4721, 4727), for implementation*
 7 *of the Settlement, nor shall it be construed to limit or mod-*
 8 *ify existing or future Central Valley Project ratesetting poli-*
 9 *cies.*

10 **SEC. 107. COMPLIANCE WITH CENTRAL VALLEY PROJECT**
 11 **IMPROVEMENT ACT.**

12 *Congress hereby finds and declares that the Settlement*
 13 *satisfies and discharges all of the obligations of the Sec-*
 14 *retary contained in section 3406(c)(1) of the Reclamation*
 15 *Projects Authorization and Adjustment Act of 1992 (Public*
 16 *Law 102–575; 106 Stat. 4721), provided, however, that—*

17 *(1) the Secretary shall continue to assess and col-*
 18 *lect the charges provided in section 3406(c)(1) of the*
 19 *Reclamation Projects Authorization and Adjustment*
 20 *Act of 1992 (Public Law 102–575; 106 Stat. 4721),*
 21 *as provided in the Settlement; and*

22 *(2) those assessments and collections shall con-*
 23 *tinue to be counted toward the requirements of the*
 24 *Secretary contained in section 3407(c)(2) of the Rec-*

1 *lamation Projects Authorization and Adjustment Act*
 2 *of 1992 (Public Law 102–575; 106 Stat. 4726).*

3 **SEC. 108. NO PRIVATE RIGHT OF ACTION.**

4 *(a) IN GENERAL.—Nothing in this title confers upon*
 5 *any person or entity not a party to the Settlement a private*
 6 *right of action or claim for relief to interpret or enforce*
 7 *the provisions of this title or the Settlement.*

8 *(b) APPLICABLE LAW.—This section shall not alter or*
 9 *curtail any right of action or claim for relief under any*
 10 *other applicable law.*

11 **SEC. 109. APPROPRIATIONS; SETTLEMENT FUND.**

12 *(a) IMPLEMENTATION COSTS.—*

13 *(1) IN GENERAL.—The costs of implementing the*
 14 *Settlement shall be covered by payments or in-kind*
 15 *contributions made by Friant Division contractors*
 16 *and other non-Federal parties, including the funds*
 17 *provided in paragraphs (1) through (4) of subsection*
 18 *(c), estimated to total \$440,000,000, of which the non-*
 19 *Federal payments are estimated to total \$200,000,000*
 20 *(at October 2006 price levels) and the amount from*
 21 *repaid Central Valley Project capital obligations is*
 22 *estimated to total \$240,000,000, the additional Fed-*
 23 *eral appropriation of \$250,000,000 authorized pursu-*
 24 *ant to subsection (b)(1), and such additional funds*
 25 *authorized pursuant to subsection (b)(2); provided*

1 *however, that the costs of implementing the provisions*
 2 *of section 104(a)(1) shall be shared by the State of*
 3 *California pursuant to the terms of a memorandum*
 4 *of understanding executed by the State of California*
 5 *and the Parties to the Settlement on September 13,*
 6 *2006, which includes at least \$110,000,000 of State*
 7 *funds.*

8 (2) *ADDITIONAL AGREEMENTS.—*

9 (A) *IN GENERAL.—The Secretary shall enter*
 10 *into 1 or more agreements to fund or implement*
 11 *improvements on a project-by-project basis with*
 12 *the State of California.*

13 (B) *REQUIREMENTS.—Any agreements en-*
 14 *tered into under subparagraph (A) shall provide*
 15 *for recognition of either monetary or in-kind*
 16 *contributions toward the State of California's*
 17 *share of the cost of implementing the provisions*
 18 *of section 104(a)(1).*

19 (3) *LIMITATION.—Except as provided in the Set-*
 20 *tlement, to the extent that costs incurred solely to im-*
 21 *plement this Settlement would not otherwise have*
 22 *been incurred by any entity or public or local agency*
 23 *or subdivision of the State of California, such costs*
 24 *shall not be borne by any such entity, agency, or sub-*

1 *division of the State of California, unless such costs*
 2 *are incurred on a voluntary basis.*

3 *(b) AUTHORIZATION OF APPROPRIATIONS.—*

4 *(1) IN GENERAL.—In addition to the funding*
 5 *provided in subsection (c), there are also authorized*
 6 *to be appropriated not to exceed \$250,000,000 (at Oc-*
 7 *tober 2006 price levels) to implement this title and*
 8 *the Settlement, to be available until expended; pro-*
 9 *vided however, that the Secretary is authorized to*
 10 *spend such additional appropriations only in*
 11 *amounts equal to the amount of funds deposited in*
 12 *the Fund (not including payments under subsection*
 13 *(c)(2) and proceeds under subsection (c)(3)), the*
 14 *amount of in-kind contributions, and other non-Fed-*
 15 *eral payments actually committed to the implementa-*
 16 *tion of this title or the Settlement.*

17 *(2) USE OF THE CENTRAL VALLEY PROJECT RES-*
 18 *TORATION FUND.—The Secretary is authorized to use*
 19 *monies from the Central Valley Project Restoration*
 20 *Fund created under section 3407 of the Reclamation*
 21 *Projects Authorization and Adjustment Act of 1992*
 22 *(Public Law 102–575; 106 Stat. 4727) for purposes*
 23 *of this title in an amount not to exceed \$2,000,000*
 24 *(October 2006 price levels) in any fiscal year.*

1 (c) *FUND.*—*There is hereby established within the*
 2 *Treasury of the United States a fund, to be known as the*
 3 *San Joaquin River Restoration Fund, into which the fol-*
 4 *lowing shall be deposited and used solely for the purpose*
 5 *of implementing the Settlement except as otherwise provided*
 6 *in subsections (a) and (b) of section 303, to be available*
 7 *for expenditure without further appropriation:*

8 (1) *At the beginning of the fiscal year following*
 9 *enactment of this title, all payments received pursu-*
 10 *ant to section 3406(c)(1) of the Reclamation Projects*
 11 *Authorization and Adjustment Act of 1992 (Public*
 12 *Law 102–575; 106 Stat. 4721).*

13 (2) *The construction cost component (not other-*
 14 *wise needed to cover operation and maintenance*
 15 *costs) of payments made by Friant Division, Hidden*
 16 *Unit, and Buchanan Unit long-term contractors pur-*
 17 *suant to long-term water service contracts or pursu-*
 18 *ant to repayment contracts, including repayment con-*
 19 *tracts executed pursuant to section 110. The construc-*
 20 *tion cost repayment obligation assigned such contrac-*
 21 *tors under such contracts shall be reduced by the*
 22 *amount paid pursuant to this paragraph and the ap-*
 23 *propriate share of the existing Federal investment in*
 24 *the Central Valley Project to be recovered by the Sec-*

1 retary pursuant to Public Law 99–546 (100 Stat.
2 3050) shall be reduced by an equivalent sum.

3 (3) *Proceeds from the sale of water pursuant to*
4 *the Settlement, or from the sale of property or inter-*
5 *ests in property as provided in section 105.*

6 (4) *Any non-Federal funds, including State cost-*
7 *sharing funds, contributed to the United States for*
8 *implementation of the Settlement, which the Secretary*
9 *may expend without further appropriation for the*
10 *purposes for which contributed.*

11 (d) *LIMITATION ON CONTRIBUTIONS.—Payments made*
12 *by long-term contractors who receive water from the Friant*
13 *Division and Hidden and Buchanan Units of the Central*
14 *Valley Project pursuant to sections 3406(c)(1) and*
15 *3407(d)(2) of the Reclamation Projects Authorization and*
16 *Adjustment Act of 1992 (Public Law 102–575; 106 Stat.*
17 *4721, 4727) and payments made pursuant to paragraph*
18 *16(b)(3) of the Settlement and subsection (c)(2) shall be the*
19 *limitation of such entities’ direct financial contribution to*
20 *the Settlement, subject to the terms and conditions of para-*
21 *graph 21 of the Settlement.*

22 (e) *NO ADDITIONAL EXPENDITURES REQUIRED.—*
23 *Nothing in this title shall be construed to require a Federal*
24 *official to expend Federal funds not appropriated by Con-*

1 gress, or to seek the appropriation of additional funds by
 2 Congress, for the implementation of the Settlement.

3 (f) *REACH 4B*.—

4 (1) *STUDY*.—

5 (A) *IN GENERAL*.—In accordance with the
 6 Settlement and the memorandum of under-
 7 standing executed pursuant to paragraph 6 of
 8 the Settlement, the Secretary shall conduct a
 9 study that specifies—

10 (i) the costs of undertaking any work
 11 required under paragraph 11(a)(3) of the
 12 Settlement to increase the capacity of reach
 13 4B prior to reinitiation of Restoration
 14 Flows;

15 (ii) the impacts associated with re-
 16 initiation of such flows; and

17 (iii) measures that shall be imple-
 18 mented to mitigate impacts.

19 (B) *DEADLINE*.—The study under subpara-
 20 graph (A) shall be completed prior to restoration
 21 of any flows other than Interim Flows.

22 (2) *REPORT*.—

23 (A) *IN GENERAL*.—The Secretary shall file
 24 a report with Congress not later than 90 days
 25 after issuing a determination, as required by the

1 *Settlement, on whether to expand channel con-*
 2 *veyance capacity to 4500 cubic feet per second in*
 3 *reach 4B of the San Joaquin River, or use an*
 4 *alternative route for pulse flows, that—*

5 *(i) explains whether the Secretary has*
 6 *decided to expand Reach 4B capacity to*
 7 *4500 cubic feet per second; and*

8 *(ii) addresses the following matters:*

9 *(I) The basis for the Secretary's*
 10 *determination, whether set out in envi-*
 11 *ronmental review documents or other-*
 12 *wise, as to whether the expansion of*
 13 *Reach 4B would be the preferable*
 14 *means to achieve the Restoration Goal*
 15 *as provided in the Settlement, includ-*
 16 *ing how different factors were assessed*
 17 *such as comparative biological and*
 18 *habitat benefits, comparative costs, rel-*
 19 *ative availability of State cost-sharing*
 20 *funds, and the comparative benefits*
 21 *and impacts on water temperature,*
 22 *water supply, private property, and*
 23 *local and downstream flood control.*

24 *(II) The Secretary's final cost es-*
 25 *timate for expanding Reach 4B capac-*

ity to 4500 cubic feet per second, or any alternative route selected, as well as the alternative cost estimates provided by the State, by the Restoration Administrator, and by the other parties to the Settlement.

(III) The Secretary's plan for funding the costs of expanding Reach 4B or any alternative route selected, whether by existing Federal funds provided under this Act, by non-Federal funds, by future Federal appropriations, or some combination of such sources.

(B) DETERMINATION REQUIRED.—The Secretary shall, to the extent feasible, make the determination in subparagraph (A) prior to undertaking any substantial construction work to increase capacity in reach 4B.

(3) COSTS.—If the Secretary's estimated Federal cost for expanding reach 4B in paragraph (2), in light of the Secretary's funding plan set out in that paragraph, would exceed the remaining Federal funding authorized by this title (including all funds re-allocated, all funds dedicated, and all new funds au-

1 *thorized by this title and separate from all commit-*
 2 *ments of State and other non-Federal funds and in-*
 3 *kind commitments), then before the Secretary com-*
 4 *mences actual construction work in reach 4B (other*
 5 *than planning, design, feasibility, or other prelimi-*
 6 *nary measures) to expand capacity to 4500 cubic feet*
 7 *per second to implement this Settlement, Congress*
 8 *must have increased the applicable authorization ceil-*
 9 *ing provided by this title in an amount at least suffi-*
 10 *cient to cover the higher estimated Federal costs.*

11 **SEC. 110. REPAYMENT CONTRACTS AND ACCELERATION OF**
 12 **REPAYMENT OF CONSTRUCTION COSTS.**

13 (a) *CONVERSION OF CONTRACTS.—*

14 (1) *The Secretary is authorized and directed to*
 15 *convert, prior to December 31, 2010, all existing long-*
 16 *term contracts with the following Friant Division,*
 17 *Hidden Unit, and Buchanan Unit contractors, en-*
 18 *tered under subsection (e) of section 9 of the Act of*
 19 *August 4, 1939 (53 Stat. 1196), to contracts under*
 20 *subsection (d) of section 9 of said Act (53 Stat. 1195),*
 21 *under mutually agreeable terms and conditions:*
 22 *Arvin-Edison Water Storage District; Delano-*
 23 *Earlimart Irrigation District; Exeter Irrigation Dis-*
 24 *trict; Fresno Irrigation District; Ivanhoe Irrigation*
 25 *District; Lindmore Irrigation District; Lindsay-*

1 *Strathmore Irrigation District; Lower Tule River Ir-*
 2 *rigation District; Orange Cove Irrigation District;*
 3 *Porterville Irrigation District; Saucelito Irrigation*
 4 *District; Shafter-Wasco Irrigation District; Southern*
 5 *San Joaquin Municipal Utility District; Stone Cor-*
 6 *ral Irrigation District; Tea Pot Dome Water District;*
 7 *Terra Bella Irrigation District; Tulare Irrigation*
 8 *District; Madera Irrigation District; and Chowchilla*
 9 *Water District. Upon request of the contractor, the*
 10 *Secretary is authorized to convert, prior to December*
 11 *31, 2010, other existing long-term contracts with*
 12 *Friant Division contractors entered under subsection*
 13 *(e) of section 9 of the Act of August 4, 1939 (53 Stat.*
 14 *1196), to contracts under subsection (d) of section 9*
 15 *of said Act (53 Stat. 1195), under mutually agreeable*
 16 *terms and conditions.*

17 (2) *Upon request of the contractor, the Secretary*
 18 *is further authorized to convert, prior to December 31,*
 19 *2010, any existing Friant Division long-term con-*
 20 *tract entered under subsection (c)(2) of section 9 of*
 21 *the Act of August 4, 1939 (53 Stat. 1194), to a con-*
 22 *tract under subsection (c)(1) of section 9 of said Act,*
 23 *under mutually agreeable terms and conditions.*

24 (3) *All such contracts entered into pursuant to*
 25 *paragraph (1) shall—*

1 (A) require the repayment, either in lump
2 sum or by accelerated prepayment, of the re-
3 maining amount of construction costs identified
4 in the Central Valley Project Schedule of Irriga-
5 tion Capital Rates by Contractor 2007 Irriga-
6 tion Water Rates, dated January 25, 2007, as
7 adjusted to reflect payments not reflected in such
8 schedule, and properly assignable for ultimate
9 return by the contractor, no later than January
10 31, 2011, or if made in approximately equal an-
11 nual installments, no later than January 31,
12 2014; such amount to be discounted by $\frac{1}{2}$ the
13 Treasury Rate. An estimate of the remaining
14 amount of construction costs as of January 31,
15 2011, as adjusted, shall be provided by the Sec-
16 retary to each contractor no later than June 30,
17 2010;

18 (B) require that, notwithstanding subsection
19 (c)(2), construction costs or other capitalized
20 costs incurred after the effective date of the con-
21 tract or not reflected in the schedule referenced in
22 subparagraph (A), and properly assignable to
23 such contractor, shall be repaid in not more than
24 5 years after notification of the allocation if such
25 amount is a result of a collective annual alloca-

tion of capital costs to the contractors exercising contract conversions under this subsection of less than \$5,000,000. If such amount is \$5,000,000 or greater, such cost shall be repaid as provided by applicable Reclamation law, provided that the reference to the amount of \$5,000,000 shall not be a precedent in any other context;

(C) provide that power revenues will not be available to aid in repayment of construction costs allocated to irrigation under the contract; and

(D) conform to the Settlement and this title and shall continue so long as the contractor pays applicable charges, consistent with subsection (c)(2) and applicable law.

(4) All such contracts entered into pursuant to paragraph (2) shall—

(A) require the repayment in lump sum of the remaining amount of construction costs identified in the most current version of the Central Valley Project Schedule of Municipal and Industrial Water Rates, as adjusted to reflect payments not reflected in such schedule, and properly assignable for ultimate return by the contractor, no later than January 31, 2014. An esti-

1 *mate of the remaining amount of construction*
 2 *costs as of January 31, 2014, as adjusted, shall*
 3 *be provided by the Secretary to each contractor*
 4 *no later than June 30, 2013;*

5 *(B) require that, notwithstanding subsection*
 6 *(c)(2), construction costs or other capitalized*
 7 *costs incurred after the effective date of the con-*
 8 *tract or not reflected in the schedule referenced in*
 9 *subparagraph (A), and properly assignable to*
 10 *such contractor, shall be repaid in not more than*
 11 *5 years after notification of the allocation if such*
 12 *amount is a result of a collective annual alloca-*
 13 *tion of capital costs to the contractors exercising*
 14 *contract conversions under this subsection of less*
 15 *than \$5,000,000. If such amount is \$5,000,000*
 16 *or greater, such cost shall be repaid as provided*
 17 *by applicable Reclamation law, provided that*
 18 *the reference to the amount of \$5,000,000 shall*
 19 *not be a precedent in any other context; and*

20 *(C) conform to the Settlement and this title*
 21 *and shall continue so long as the contractor pays*
 22 *applicable charges, consistent with subsection*
 23 *(c)(2) and applicable law.*

24 *(b) FINAL ADJUSTMENT.—The amounts paid pursuant*
 25 *to subsection (a) shall be subject to adjustment following*

1 *a final cost allocation by the Secretary upon completion*
 2 *of the construction of the Central Valley Project. In the*
 3 *event that the final cost allocation indicates that the costs*
 4 *properly assignable to the contractor are greater than what*
 5 *has been paid by the contractor, the contractor shall be obli-*
 6 *gated to pay the remaining allocated costs. The term of such*
 7 *additional repayment contract shall be no less than 1 year*
 8 *and no more than 10 years, however, mutually agreeable*
 9 *provisions regarding the rate of repayment of such amount*
 10 *may be developed by the parties. In the event that the final*
 11 *cost allocation indicates that the costs properly assignable*
 12 *to the contractor are less than what the contractor has paid,*
 13 *the Secretary is authorized and directed to credit such over-*
 14 *payment as an offset against any outstanding or future ob-*
 15 *ligation of the contractor.*

16 *(c) APPLICABILITY OF CERTAIN PROVISIONS.—*

17 *(1) Notwithstanding any repayment obligation*
 18 *under subsection (a)(3)(B) or subsection (b), upon a*
 19 *contractor's compliance with and discharge of the ob-*
 20 *ligation of repayment of the construction costs as pro-*
 21 *vided in subsection (a)(3)(A), the provisions of section*
 22 *213(a) and (b) of the Reclamation Reform Act of*
 23 *1982 (96 Stat. 1269) shall apply to lands in such dis-*
 24 *trict.*

1 (2) *Notwithstanding any repayment obligation*
 2 *under paragraph (3)(B) or (4)(B) of subsection (a),*
 3 *or subsection (b), upon a contractor's compliance with*
 4 *and discharge of the obligation of repayment of the*
 5 *construction costs as provided in paragraphs (3)(A)*
 6 *and (4)(A) of subsection (a), the Secretary shall waive*
 7 *the pricing provisions of section 3405(d) of the Rec-*
 8 *lamation Projects Authorization and Adjustment Act*
 9 *of 1992 (Public Law 102-575) for such contractor,*
 10 *provided that such contractor shall continue to pay*
 11 *applicable operation and maintenance costs and other*
 12 *charges applicable to such repayment contracts pursu-*
 13 *ant to the then-current rate-setting policy and appli-*
 14 *cable law.*

15 (3) *Provisions of the Settlement applying to*
 16 *Friant Division, Hidden Unit, and Buchanan Unit*
 17 *long-term water service contracts shall also apply to*
 18 *contracts executed pursuant to this section.*

19 (d) *REDUCTION OF CHARGE FOR THOSE CONTRACTS*
 20 *CONVERTED PURSUANT TO SUBSECTION (A)(1).—*

21 (1) *At the time all payments by the contractor*
 22 *required by subsection (a)(3)(A) have been completed,*
 23 *the Secretary shall reduce the charge mandated in sec-*
 24 *tion 107(1) of this title, from 2020 through 2039, to*
 25 *offset the financing costs as defined in section*

1 110(d)(3). The reduction shall be calculated at the
2 time all payments by the contractor required by sub-
3 section (a)(3)(A) have been completed. The calculation
4 shall remain fixed from 2020 through 2039 and shall
5 be based upon anticipated average annual water de-
6 liveries, as mutually agreed upon by the Secretary
7 and the contractor, for the period from 2020 through
8 2039, and the amounts of such reductions shall be dis-
9 counted using the Treasury Rate; provided, that such
10 charge shall not be reduced to less than \$4.00 per acre
11 foot of project water delivered; provided further, that
12 such reduction shall be implemented annually unless
13 the Secretary determines, based on the availability of
14 other monies, that the charges mandated in section
15 107(1) are otherwise needed to cover ongoing federal
16 costs of the Settlement, including any federal oper-
17 ation and maintenance costs of facilities that the Sec-
18 retary determines are needed to implement the Settle-
19 ment. If the Secretary determines that such charges
20 are necessary to cover such ongoing federal costs, the
21 Secretary shall, instead of making the reduction in
22 such charges, reduce the contractor's operation and
23 maintenance obligation by an equivalent amount,
24 and such amount shall not be recovered by the United
25 States from any Central Valley Project contractor,

1 *provided nothing herein shall affect the obligation of*
2 *the contractor to make payments pursuant to a trans-*
3 *fer agreement with a non-federal operating entity.*

4 *(2) If the calculated reduction in paragraph (1),*
5 *taking into consideration the minimum amount re-*
6 *quired, does not result in the contractor offsetting its*
7 *financing costs, the Secretary is authorized and di-*
8 *rected to reduce, after 2019, any outstanding or fu-*
9 *ture obligations of the contractor to the Bureau of*
10 *Reclamation, other than the charge assessed and col-*
11 *lected under section 3407(d) of Public law 102–575,*
12 *by the amount of such deficiency, with such amount*
13 *indexed to 2020 using the Treasury Rate and such*
14 *amount shall be not be recovered by the United States*
15 *from any Central Valley Project contractor, provided*
16 *nothing herein shall affect the obligation of the con-*
17 *tractor to make payments pursuant to a transfer*
18 *agreement with a non-Federal operating entity.*

19 *(3) Financing costs, for the purposes of this sub-*
20 *section, shall be computed as the difference of the net*
21 *present value of the construction cost identified in*
22 *subsection (a)(3)(A) using the full Treasury Rate as*
23 *compared to using one half of the Treasury Rate and*
24 *applying those rates against a calculated average an-*
25 *nual capital repayment through 2030.*

1 (4) *Effective in 2040, the charge shall revert to*
 2 *the amount called for in section 107(1) of this title.*

3 (5) *For purposes of this section, “Treasury Rate”*
 4 *shall be defined as the 20 year Constant Maturity*
 5 *Treasury (CMT) rate published by the United States*
 6 *Department of the Treasury as of October 1, 2010.*

7 (e) *SATISFACTION OF CERTAIN PROVISIONS.—*

8 (1) *IN GENERAL.—Upon the first release of In-*
 9 *terim Flows or Restoration Flows, pursuant to para-*
 10 *graphs 13 or 15 of the Settlement, any short- or long-*
 11 *term agreement, to which 1 or more long-term Friant*
 12 *Division, Hidden Unit, or Buchanan Unit contractor*
 13 *that converts its contract pursuant to subsection (a)*
 14 *is a party, providing for the transfer or exchange of*
 15 *water not released as Interim Flows or Restoration*
 16 *Flows shall be deemed to satisfy the provisions of sub-*
 17 *section 3405(a)(1)(A) and (I) of the Reclamation*
 18 *Projects Authorization and Adjustment Act of 1992*
 19 *(Public Law 102–575) without the further concur-*
 20 *rence of the Secretary as to compliance with said sub-*
 21 *sections if the contractor provides, not later than 90*
 22 *days before commencement of any such transfer or ex-*
 23 *change for a period in excess of 1 year, and not later*
 24 *than 30 days before commencement of any proposed*
 25 *transfer or exchange with duration of less than 1*

1 *year, written notice to the Secretary stating how the*
 2 *proposed transfer or exchange is intended to reduce,*
 3 *avoid, or mitigate impacts to water deliveries caused*
 4 *by the Interim Flows or Restoration Flows or is in-*
 5 *tended to otherwise facilitate the Water Management*
 6 *Goal, as described in the Settlement. The Secretary*
 7 *shall promptly make such notice publicly available.*

8 (2) *DETERMINATION OF REDUCTIONS TO WATER*
 9 *DELIVERIES.*—*Water transferred or exchanged under*
 10 *an agreement that meets the terms of this subsection*
 11 *shall not be counted as a replacement or an offset for*
 12 *purposes of determining reductions to water deliveries*
 13 *to any Friant Division long-term contractor except as*
 14 *provided in paragraph 16(b) of the Settlement. The*
 15 *Secretary shall, at least annually, make publicly*
 16 *available a compilation of the number of transfer or*
 17 *exchange agreements exercising the provisions of this*
 18 *subsection to reduce, avoid, or mitigate impacts to*
 19 *water deliveries caused by the Interim Flows or Res-*
 20 *toration Flows or to facilitate the Water Management*
 21 *Goal, as well as the volume of water transferred or ex-*
 22 *changed under such agreements.*

23 (3) *STATE LAW.*—*Nothing in this subsection al-*
 24 *ters State law or permit conditions, including any*
 25 *applicable geographical restrictions on the place of*

1 *use of water transferred or exchanged pursuant to this*
 2 *subsection.*

3 (f) *CERTAIN REPAYMENT OBLIGATIONS NOT AL-*
 4 *TERED.—Implementation of the provisions of this section*
 5 *shall not alter the repayment obligation of any other long-*
 6 *term water service or repayment contractor receiving water*
 7 *from the Central Valley Project, or shift any costs that*
 8 *would otherwise have been properly assignable to the Friant*
 9 *contractors absent this section, including operations and*
 10 *maintenance costs, construction costs, or other capitalized*
 11 *costs incurred after the date of enactment of this Act, to*
 12 *other such contractors.*

13 (g) *STATUTORY INTERPRETATION.—Nothing in this*
 14 *title shall be construed to affect the right of any Friant Di-*
 15 *vision, Hidden Unit, or Buchanan Unit long-term con-*
 16 *tractor to use a particular type of financing to make the*
 17 *payments required in paragraph (3)(A) or (4)(A) of sub-*
 18 *section (a).*

19 **SEC. 111. CALIFORNIA CENTRAL VALLEY SPRING RUN CHI-**
 20 **NOOK SALMON.**

21 (a) *FINDING.—Congress finds that the implementation*
 22 *of the Settlement to resolve 18 years of contentious litigation*
 23 *regarding restoration of the San Joaquin River and the re-*
 24 *introduction of the California Central Valley Spring Run*
 25 *Chinook salmon is a unique and unprecedented cir-*

1 *cumstance that requires clear expressions of Congressional*
 2 *intent regarding how the provisions of the Endangered Spe-*
 3 *cies Act of 1973 (16 U.S.C. 1531 et seq.) are utilized to*
 4 *achieve the goals of restoration of the San Joaquin River*
 5 *and the successful reintroduction of California Central Val-*
 6 *ley Spring Run Chinook salmon.*

7 (b) *REINTRODUCTION IN THE SAN JOAQUIN RIVER.—*
 8 *California Central Valley Spring Run Chinook salmon*
 9 *shall be reintroduced in the San Joaquin River below*
 10 *Friant Dam pursuant to section 10(j) of the Endangered*
 11 *Species Act of 1973 (16 U.S.C. 1539(j)) and the Settlement,*
 12 *provided that the Secretary of Commerce finds that a per-*
 13 *mit for the reintroduction of California Central Valley*
 14 *Spring Run Chinook salmon may be issued pursuant to sec-*
 15 *tion 10(a)(1)(A) of the Endangered Species Act of 1973 (16*
 16 *U.S.C. 1539(a)(1)(A)).*

17 (c) *FINAL RULE.—*

18 (1) *DEFINITION OF THIRD PARTY.—For the pur-*
 19 *pose of this subsection, the term “third party” means*
 20 *persons or entities diverting or receiving water pursu-*
 21 *ant to applicable State and Federal laws and shall*
 22 *include Central Valley Project contractors outside of*
 23 *the Friant Division of the Central Valley Project and*
 24 *the State Water Project.*

1 (2) *ISSUANCE.*—*The Secretary of Commerce shall*
 2 *issue a final rule pursuant to section 4(d) of the En-*
 3 *dangered Species Act of 1973 (16 U.S.C. 1533(d))*
 4 *governing the incidental take of reintroduced Cali-*
 5 *fornia Central Valley Spring Run Chinook salmon*
 6 *prior to the reintroduction.*

7 (3) *REQUIRED COMPONENTS.*—*The rule issued*
 8 *under paragraph (2) shall provide that the reintro-*
 9 *duction will not impose more than de minimus: water*
 10 *supply reductions, additional storage releases, or by-*
 11 *pass flows on unwilling third parties due to such re-*
 12 *introduction.*

13 (4) *APPLICABLE LAW.*—*Nothing in this section—*

14 (A) *diminishes the statutory or regulatory*
 15 *protections provided in the Endangered Species*
 16 *Act for any species listed pursuant to section 4*
 17 *of the Endangered Species Act of 1973 (16*
 18 *U.S.C. 1533) other than the reintroduced popu-*
 19 *lation of California Central Valley Spring Run*
 20 *Chinook salmon, including protections pursuant*
 21 *to existing biological opinions or new biological*
 22 *opinions issued by the Secretary or Secretary of*
 23 *Commerce; or*

24 (B) *precludes the Secretary or Secretary of*
 25 *Commerce from imposing protections under the*

1 *Endangered Species Act of 1973 (16 U.S.C. 1531*
 2 *et seq.) for other species listed pursuant to sec-*
 3 *tion 4 of that Act (16 U.S.C. 1533) because those*
 4 *protections provide incidental benefits to such re-*
 5 *introduced California Central Valley Spring*
 6 *Run Chinook salmon.*

7 *(d) REPORT.—*

8 *(1) IN GENERAL.—Not later than December 31,*
 9 *2024, the Secretary of Commerce shall report to Con-*
 10 *gress on the progress made on the reintroduction set*
 11 *forth in this section and the Secretary’s plans for fu-*
 12 *ture implementation of this section.*

13 *(2) INCLUSIONS.—The report under paragraph*
 14 *(1) shall include—*

15 *(A) an assessment of the major challenges, if*
 16 *any, to successful reintroduction;*

17 *(B) an evaluation of the effect, if any, of the*
 18 *reintroduction on the existing population of*
 19 *California Central Valley Spring Run Chinook*
 20 *salmon existing on the Sacramento River or its*
 21 *tributaries; and*

22 *(C) an assessment regarding the future of*
 23 *the reintroduction.*

24 *(e) FERC PROJECTS.—*

1 (1) *IN GENERAL.*—*With regard to California*
 2 *Central Valley Spring Run Chinook salmon reintro-*
 3 *duced pursuant to the Settlement, the Secretary of*
 4 *Commerce shall exercise its authority under section*
 5 *18 of the Federal Power Act (16 U.S.C. 811) by re-*
 6 *erving its right to file prescriptions in proceedings*
 7 *for projects licensed by the Federal Energy Regulatory*
 8 *Commission on the Calaveras, Stanislaus, Tuolumne,*
 9 *Merced, and San Joaquin rivers and otherwise con-*
 10 *sistent with subsection (c) until after the expiration*
 11 *of the term of the Settlement, December 31, 2025, or*
 12 *the expiration of the designation made pursuant to*
 13 *subsection (b), whichever ends first.*

14 (2) *EFFECT OF SUBSECTION.*—*Nothing in this*
 15 *subsection shall preclude the Secretary of Commerce*
 16 *from imposing prescriptions pursuant to section 18 of*
 17 *the Federal Power Act (16 U.S.C. 811) solely for other*
 18 *anadromous fish species because those prescriptions*
 19 *provide incidental benefits to such reintroduced Cali-*
 20 *fornia Central Valley Spring Run Chinook salmon.*

21 (f) *EFFECT OF SECTION.*—*Nothing in this section is*
 22 *intended or shall be construed—*

23 (1) *to modify the Endangered Species Act of*
 24 *1973 (16 U.S.C. 1531 et seq.) or the Federal Power*
 25 *Act (16 U.S.C. 791a et seq.); or*

(2) *to establish a precedent with respect to any other application of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or the Federal Power Act (16 U.S.C. 791a et seq.).*

TITLE II—STUDY TO DEVELOP WATER PLAN; REPORT

SEC. 201. STUDY TO DEVELOP WATER PLAN; REPORT.

(a) *PLAN.*—

(1) *GRANT.*—*To the extent that funds are made available in advance for this purpose, the Secretary of the Interior, acting through the Bureau of Reclamation, shall provide direct financial assistance to the California Water Institute, located at California State University, Fresno, California, to conduct a study regarding the coordination and integration of sub-regional integrated regional water management plans into a unified Integrated Regional Water Management Plan for the subject counties in the hydrologic basins that would address issues related to—*

(A) *water quality;*

(B) *water supply (both surface, ground water banking, and brackish water desalination);*

(C) *water conveyance;*

(D) *water reliability;*

1 (E) water conservation and efficient use (by
2 distribution systems and by end users);

3 (F) flood control;

4 (G) water resource-related environmental
5 enhancement; and

6 (H) population growth.

7 (2) *STUDY AREA.*—The study area referred to in
8 paragraph (1) is the proposed study area of the San
9 Joaquin River Hydrologic Region and Tulare Lake
10 Hydrologic Region, as defined by California Depart-
11 ment of Water Resources Bulletin 160–05, volume 3,
12 chapters 7 and 8, including Kern, Tulare, Kings,
13 Fresno, Madera, Merced, Stanislaus, and San Joa-
14 quin counties in California.

15 (b) *USE OF PLAN.*—The Integrated Regional Water
16 Management Plan developed for the 2 hydrologic basins
17 under subsection (a) shall serve as a guide for the counties
18 in the study area described in subsection (a)(2) to use as
19 a mechanism to address and solve long-term water needs
20 in a sustainable and equitable manner.

21 (c) *REPORT.*—The Secretary shall ensure that a report
22 containing the results of the Integrated Regional Water
23 Management Plan for the hydrologic regions is submitted
24 to the Committee on Energy and Natural Resources of the
25 Senate and the Committee on Natural Resources of the

1 *House of Representatives not later than 24 months after fi-*
 2 *nancial assistance is made available to the California*
 3 *Water Institute under subsection (a)(1).*

4 (d) *AUTHORIZATION OF APPROPRIATIONS.—There are*
 5 *authorized to be appropriated to carry out this section*
 6 *\$1,000,000 to remain available until expended.*

7 ***TITLE III—FRIANT DIVISION***
 8 ***IMPROVEMENTS***

9 ***SEC. 301. FEDERAL FACILITY IMPROVEMENTS.***

10 (a) *The Secretary of the Interior (hereafter referred to*
 11 *as the “Secretary”) is authorized and directed to conduct*
 12 *feasibility studies in coordination with appropriate Fed-*
 13 *eral, State, regional, and local authorities on the following*
 14 *improvements and facilities in the Friant Division, Central*
 15 *Valley Project, California:*

16 (1) *Restoration of the capacity of the Friant-*
 17 *Kern Canal and Madera Canal to such capacity as*
 18 *previously designed and constructed by the Bureau of*
 19 *Reclamation.*

20 (2) *Reverse flow pump-back facilities on the*
 21 *Friant-Kern Canal, with reverse-flow capacity of ap-*
 22 *proximately 500 cubic feet per second at the Poso and*
 23 *Shafter Check Structures and approximately 300*
 24 *cubic feet per second at the Woollomes Check Struc-*
 25 *ture.*

1 (b) Upon completion of and consistent with the appli-
 2 cable feasibility studies, the Secretary is authorized to con-
 3 struct the improvements and facilities identified in sub-
 4 section (a) in accordance with all applicable Federal and
 5 State laws.

6 (c) The costs of implementing this section shall be in
 7 accordance with section 303, and shall be a nonreimburs-
 8 able Federal expenditure.

9 **SEC. 302. FINANCIAL ASSISTANCE FOR LOCAL PROJECTS.**

10 (a) *AUTHORIZATION.*—The Secretary is authorized to
 11 provide financial assistance to local agencies within the
 12 Central Valley Project, California, for the planning, design,
 13 environmental compliance, and construction of local facili-
 14 ties to bank water underground or to recharge groundwater,
 15 and that recover such water, provided that the project meets
 16 the criteria in subsection (b). The Secretary is further au-
 17 thorized to require that any such local agency receiving fi-
 18 nancial assistance under the terms of this section submit
 19 progress reports and accountings to the Secretary, as the
 20 Secretary deems appropriate, which such reports shall be
 21 publicly available.

22 (b) *CRITERIA.*—

23 (1) A project shall be eligible for Federal finan-
 24 cial assistance under subsection (a) only if all or a
 25 portion of the project is designed to reduce, avoid, or

1 *offset the quantity of the expected water supply im-*
2 *pacts to Friant Division long-term contractors caused*
3 *by the Interim or Restoration Flows authorized in*
4 *title I of this Act, and such quantities have not al-*
5 *ready been reduced, avoided, or offset by other pro-*
6 *grams or projects.*

7 *(2) Federal financial assistance shall only apply*
8 *to the portion of a project that the local agency des-*
9 *ignates as reducing, avoiding, or offsetting the ex-*
10 *pected water supply impacts caused by the Interim or*
11 *Restoration Flows authorized in title I of this Act,*
12 *consistent with the methodology developed pursuant to*
13 *paragraph (3)(C).*

14 *(3) No Federal financial assistance shall be pro-*
15 *vided by the Secretary under this title for construc-*
16 *tion of a project under subsection (a) unless the Sec-*
17 *retary—*

18 *(A) determines that appropriate planning,*
19 *design, and environmental compliance activities*
20 *associated with such a project have been com-*
21 *pleted, and that the Secretary has been offered*
22 *the opportunity to participate in the project at*
23 *a price that is no higher than the local agency's*
24 *own costs, in order to secure necessary storage,*
25 *extraction, and conveyance rights for water that*

1 *may be needed to meet the Restoration Goal as*
2 *described in title I of this Act, where such project*
3 *has capacity beyond that designated for the pur-*
4 *poses in paragraph (2) or where it is feasible to*
5 *expand such project to allow participation by the*
6 *Secretary;*

7 *(B) determines, based on information avail-*
8 *able at the time, that the local agency has the fi-*
9 *nancial capability and willingness to fund its*
10 *share of the project's construction and all oper-*
11 *ation and maintenance costs on an annual basis;*

12 *(C) determines that a method acceptable to*
13 *the Secretary has been developed for quantifying*
14 *the benefit, in terms of reduction, avoidance, or*
15 *offset of the water supply impacts expected to be*
16 *caused by the Interim or Restoration Flows au-*
17 *thorized in title I of this Act, that will result*
18 *from the project, and for ensuring appropriate*
19 *adjustment in the recovered water account pur-*
20 *suant to section 104(a)(5); and*

21 *(D) has entered into a cost-sharing agree-*
22 *ment with the local agency which commits the*
23 *local agency to funding its share of the project's*
24 *construction costs on an annual basis.*

1 (c) *GUIDELINES.*—Within 1 year from the date of en-
 2 actment of this title, the Secretary shall develop, in con-
 3 sultation with the Friant Division long-term contractors,
 4 proposed guidelines for the application of the criteria de-
 5 fined in subsection (b), and will make the proposed guide-
 6 lines available for public comment. Such guidelines may
 7 consider prioritizing the distribution of available funds to
 8 projects that provide the broadest benefit within the affected
 9 area and the equitable allocation of funds. Upon adoption
 10 of such guidelines, the Secretary shall implement such as-
 11 sistance program, subject to the availability of funds appro-
 12 priated for such purpose.

13 (d) *COST SHARING.*—The Federal financial assistance
 14 provided to local agencies under subsection (a) shall not ex-
 15 ceed—

16 (1) 50 percent of the costs associated with plan-
 17 ning, design, and environmental compliance activities
 18 associated with such a project; and

19 (2) 50 percent of the costs associated with con-
 20 struction of any such project.

21 (e) *PROJECT OWNERSHIP.*—

22 (1) Title to, control over, and operation of,
 23 projects funded under subsection (a) shall remain in
 24 one or more non-Federal local agencies. Nothing in
 25 this title authorizes the Secretary to operate a

1 *groundwater bank along or adjacent to the San Joa-*
 2 *quin River upstream of the confluence with the*
 3 *Merced River, and any such groundwater bank shall*
 4 *be operated by a non-Federal entity. All projects*
 5 *funded pursuant to this subsection shall comply with*
 6 *all applicable Federal and State laws, including pro-*
 7 *visions of California water law.*

8 *(2) All operation, maintenance, and replacement*
 9 *and rehabilitation costs of such projects shall be the*
 10 *responsibility of the local agency. The Secretary shall*
 11 *not provide funding for any operation, maintenance,*
 12 *or replacement and rehabilitation costs of projects*
 13 *funded under subsection (a).*

14 **SEC. 303. AUTHORIZATION OF APPROPRIATIONS.**

15 *(a) The Secretary is authorized and directed to use*
 16 *monies from the fund established under section 109 to carry*
 17 *out the provisions of section 301(a)(1), in an amount not*
 18 *to exceed \$35,000,000.*

19 *(b) In addition to the funds made available pursuant*
 20 *to subsection (a), the Secretary is also authorized to expend*
 21 *such additional funds from the fund established under sec-*
 22 *tion 109 to carry out the purposes of section 301(a)(2), if*
 23 *such facilities have not already been authorized and funded*
 24 *under the plan provided for pursuant to section 104(a)(4),*
 25 *in an amount not to exceed \$17,000,000, provided that the*

1 *Secretary first determines that such expenditure will not*
2 *conflict with or delay his implementation of actions re-*
3 *quired by title I of this Act. Notice of the Secretary's deter-*
4 *mination shall be published not later than his submission*
5 *of the report to Congress required by section 109(f)(2).*

6 *(c) In addition to funds made available in subsections*
7 *(a) and (b), there are authorized to be appropriated*
8 *\$50,000,000 (October 2008 price levels) to carry out the*
9 *purposes of this title which shall be non-reimbursable.*

Calendar No. 838

110TH CONGRESS
2^D Session

S. 27

[Report No. 110-400]

A BILL

To authorize the implementation of the San
Joaquin River Restoration Settlement.

JUNE 25, 2008

Reported with an amendment